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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 MARANDA A. GAMETT,

Case No. 2:18-01000-MMD-PAL

7 Plaintiff,

ORDER

8 v.

(IFP App – ECF No. 1)

9 NANCY A. BERRYHILL, Acting
10 Commissioner of Social Security,

11 Defendant.¹

12 Plaintiff Maranda A. Gamett has submitted an Application to Proceed *In Forma Pauperis*
13 (ECF No. 1) along with a proposed Complaint (ECF No. 1-1). The Application and Complaint
14 are referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3 of the Local
15 Rules of Practice.

16 **I. APPLICATION TO PROCEED *IN FORMA PAUPERIS***

17 Ms. Gamett’s Application includes the affidavit required by § 1915(a) showing an inability
18 to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma*
19 *pauperis* (“IFP”) will be granted. The court will now review the Complaint.

20 **II. SCREENING THE COMPLAINT**

21 **A. Legal Standards**

22 After granting a request to proceed IFP, federal courts must screen a complaint and any
23 amended complaints before allowing a case to move forward, issuing summonses, and requiring a

24
25 ¹ The proposed Complaint generically names the Commissioner of Social Security as the defendant in this
26 action. Nancy A. Berryhill is the Acting Commissioner of Social Security. Pursuant to the Federal Rules
27 of Civil Procedure and the Social Security Act, the court therefore substitutes Nancy A. Berryhill, Acting
28 Commissioner of Social Security, for the “Commissioner of Social Security” as the defendant. *See* Fed. R.
Civ. P. 25(d) (allowing the automatic substitution of a successor to a public officer who is a party to an
action but ceases to hold office while the action is pending); 42 U.S.C. § 405(g) (“Any action instituted in
accordance with this subsection shall survive notwithstanding any change in the person occupying the office
of Commissioner of Social Security or any vacancy in such office.”).

1 responsive pleading. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc). Courts are
2 required to dismiss an IFP action if the complaint fails to state a claim upon which relief may be
3 granted, is legally “frivolous or malicious,” or seeks money from a defendant who is immune from
4 such relief. 28 U.S.C. § 1915(e)(2). The standard for determining whether a plaintiff has failed
5 to state a claim upon which relief can be granted under § 1915 is the same as the standard under
6 Rule 12(b)(6) of the Federal Rules of Civil Procedure² for failure to state a claim. *Watison v.*
7 *Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). A screening under Rule 12(b)(6) is essentially a
8 ruling on a question of law. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

9 A properly pled complaint must provide “a short and plain statement of the claim showing
10 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). To avoid dismissal, a plaintiff must
11 allege enough facts to state a claim for relief that is plausible on its face. *Bell Atlantic Corp. v.*
12 *Twombly*, 550 U.S. 544, 570 (2007). A claim has facial plausibility when a plaintiff alleges factual
13 content that allows the court to make a reasonable inference that a defendant is liable for the claim
14 alleged. *Teixeira v. County of Alameda*, 873 F.3d 670, 678 (9th Cir. 2017) (quoting *Ashcroft v.*
15 *Iqbal*, 556 U.S. 662, 678 (2009)). This plausibility standard is not a “ ‘probability requirement,’
16 but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556
17 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). Although Rule 8(a) does not require detailed
18 factual allegations, it demands “more than labels and conclusions.” *Iqbal*, 556 U.S. at 678.

19 Here, Ms. Gamett’s Complaint challenges a decision by the Social Security Administration
20 (“SSA”) denying her disability insurance benefits and Supplemental Security Income under Titles
21 II and XVI of the Social Security Act. *See* Compl. (ECF No. 1-1) at ¶ III. To state a valid benefits
22 claim, a complaint must give a defendant fair notice of what the plaintiff’s claim is and the grounds
23 upon which it rests. *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). A plaintiff must present
24 sufficient detail for the court to understand the disputed issues so that it can meaningfully screen
25 the complaint. *See* 4 Soc. Sec. Law & Prac. § 56:4 (2016); 2 Soc. Sec. Disab. Claims Prac. &
26 Proc. §§ 19:92–93 (2nd ed. 2015). To do so, a complaint should state *when* and *how* a plaintiff
27 exhausted her administrative remedies with the SSA and the nature of her disability, including the

28 ² All references to a “Rule” or the “Rules in this Order refer to the Federal Rules of Civil Procedure.

1 date she claims she became disabled. The complaint should also contain a short and concise
2 statement identifying *why* the SSA’s decision was wrong and showing that the plaintiff is entitled
3 to relief. *See Sabbia v. Comm’r Soc. Sec. Admin.*, 669 F. Supp. 2d 914, 918 (N.D. Ill. 2009).

4 **B. Exhaustion of Administrative Remedies**

5 Before a plaintiff can sue the SSA in federal court, she must exhaust her administrative
6 remedies. 42 U.S.C. § 405(g); *Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989)
7 (“Section 405(g) provides that a civil action may be brought only after (1) the claimant has been
8 party to a hearing held by the Secretary, and (2) the Secretary has made a final decision on the
9 claim”). Generally, if the SSA denies an application for disability benefits, a claimant can request
10 reconsideration of the decision. If the claim is denied upon reconsideration, a claimant may request
11 a hearing before an Administrative Law Judge (“ALJ”). If the ALJ denies the claim, a claimant
12 may request review of the decision by the Appeals Council. If the Appeals Council declines to
13 review the ALJ’s decision, a claimant may then request review by the United States District Court.
14 *See* 20 C.F.R. §§ 404.981, 416.1481. A civil action for judicial review must be commenced within
15 60 days after receipt of the Appeals Council’s notice of a final decision. *Id.* *See also* 20 C.F.R.
16 § 405.501. The SSA assumes that the notice of final decision will be received within five days of
17 the date on the notice unless shown otherwise; thus, an action commenced within 65 days is
18 presumed timely. The civil action must be filed in the judicial district in which the plaintiff resides.
19 42 U.S.C. § 405 (g).

20 In this case, Ms. Gamett alleges that on March 30, 2018, the Appeals Council denied the
21 request for review and the ALJ’s decision became the final decision of the Commissioner. Compl.
22 ¶ V. Thus, it appears she has exhausted her administrative remedies. Ms. Gamett timely
23 commenced this action as the Complaint was filed on June 3, 2018, and the Complaint indicates
24 that she resides within the District of Nevada. *Id.* ¶ II. Accordingly, she has satisfied these
25 prerequisites for judicial review.

26 **C. Grounds for Ms. Gamett’s Appeal**

27 The Complaint seeks judicial review of the Commissioner’s decision benefits and asks the
28 court to reverse that decision, or alternatively, to remand this matter for a new hearing. A district

1 court can affirm, modify, reverse, or remand a decision if plaintiff has exhausted his administrative
2 remedies and timely filed a civil action. However, judicial review of the Commissioner's final
3 decision is limited to determining whether: (1) there is substantial evidence in the record as a whole
4 to support the Commissioner's findings; and (2) the correct legal standards were applied. *Morgan*
5 *v. Comm'r Soc. Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

6 In her Complaint, Ms. Gamett alleges she has been under a disability commencing on or
7 before the alleged onset date of September 3, 2014, and continuing through the present. Compl.
8 ¶ VI. The ALJ found Gamett to have the medically determinable impairments of Attention Deficit
9 Hyperactivity Disorder, Attention Deficit Disorder, Depression/Major Depressive Disorder,
10 Migraine Headaches, History of Seizures and Unspecified Neurodevelopmental Disorder. *Id.*
11 Gamett also asserts she has a FSIQ of 68, Bipolar Disorder, Obsessive Compulsive Disorder, and
12 Lumbar Degenerative Disc Disease. *Id.* The Complaint identifies three reversible errors by the
13 ALJ: (i) improperly rejecting medical evidence and testimony by Gamett and a lay witness;
14 (ii) failing to consider as severe Gamett's IQ of 68 with associated deficits; and (iii) concluding
15 Gamett could perform two jobs the vocational expert identified in testimony that were inconsistent
16 with the residual functional capacity finding. *Id.* The Complaint contains sufficient allegations of
17 underlying facts to give the Commissioner fair notice of Gamett's disagreement with the SSA's
18 final determination. Accordingly, Ms. Gamett has stated a claim for initial screening purposes
19 under 28 U.S.C. § 1915.

20 Based on the foregoing,

21 **IT IS ORDERED:**

- 22 1. Plaintiff Maranda A. Gamett's Application to Proceed *In Forma Pauperis* (ECF No. 1)
23 is **GRANTED**. She will not be required to pay the \$400 filing fee.
 - 24 2. Ms. Gamett is permitted to maintain this action to conclusion without prepaying any
25 fees or costs or giving security therefor. However, this Order granting IFP status does
26 not extend to the issuance and/or service of subpoenas at government expense.
 - 27 3. The Clerk of the Court shall **FILE** the Complaint.
- 28

- 1 4. The Clerk of the Court shall **ISSUE SUMMONS** to the United States Attorney for the
2 District of Nevada and **DELIVER** the summons and Complaint to the U.S. Marshal
3 for service.
- 4 5. The Clerk of Court shall also **ISSUE SUMMONS** to the Commissioner of Social
5 Security and the Attorney General of the United States.
- 6 6. Ms. Gamett shall **SERVE** the Commissioner by sending a copy of the summons and
7 Complaint by certified mail to: (1) Office of the Regional Chief Counsel, Region IX,
8 Social Security Administration, 160 Spear Street, Suite 800, San Francisco, California
9 94105-1545; and (2) Attorney General of the United States, Department of Justice, 950
10 Pennsylvania Avenue, N.W., Room 4400, Washington, D.C. 20530.
- 11 7. Following the Commissioner's filing of an answer, the court will issue a scheduling
12 order setting a briefing schedule.
- 13 8. From this point forward, Gamett shall serve upon Commissioner or, if appearance has
14 been entered by counsel, upon the attorney, a copy of every pleading, motion, or other
15 document filed with the Clerk of the Court pursuant to LR IC 1-1 and 4-1 of the Local
16 Rules of Practice. In accordance with LR IC 4-1(d), the parties shall include with each
17 filing a certificate of service stating that a true and correct copy of the document was
18 served on an opposing party or counsel for an opposing party and indicating how
19 service was accomplished. The court may disregard any paper received by a district
20 judge or magistrate judge that has not been filed with the Clerk of the Court, and any
21 paper received by a district judge, magistrate judge, or the Clerk of the Court that fails
22 to include a certificate of service.

23 Dated this 6th day of June, 2018.

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25 
26 PEGGY A. LEEN
27 UNITED STATES MAGISTRATE JUDGE
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